

Introduced by Senator Wieckowski

February 27, 2015

An act to amend Sections 3111, 3118, ~~and 3170~~ 3170, and 3183 of, and to add Section 3117.5 to, the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

SB 594, as amended, Wieckowski. Child custody.

Existing law requires the court to require an evaluation, investigation, or assessment in any contested proceeding involving child custody or visitation rights ~~where~~ *when* the court has appointed a child custody evaluator or has referred a case for a full or partial court-connected evaluation, investigation, or assessment, and the court determines that there is a serious allegation of child sexual abuse. Existing law establishes certain minimum requirements for the evaluation, investigation, or assessment. *Existing law authorizes a mediator to submit a recommendation to the court as to the custody of, or visitation with, a child. A mediator acting in that capacity is called a child custody recommending counselor.*

This bill would require the Judicial Council to, not later than January 1, 2016, develop a form that every ~~investigator or evaluator~~ *investigator, evaluator, or child custody recommending counselor* conducting an investigation would be required to submit to the court. The bill would require the form to delineate each requirement and require that the ~~investigator or evaluator~~ *person conducting an investigation* provide documentation in, or attached to, the form, showing that each task has been completed as required. The bill would provide that on or after January 1, 2016, an investigation that is not documented on the Judicial

Council form would not meet the minimum requirements for an investigation as required by the provisions described above. The bill would require, on or after January 1, 2016, that documentation showing compliance with those requirements and the results of the investigation be submitted to the court on the form developed by the Judicial Council.

Existing law also requires a court, if it appears on the face of a petition, application, or other pleading to modify or obtain a temporary or permanent custody or visitation order that custody, visitation, or both are contested, to set the contested issues for mediation. Existing law provides that domestic violence cases shall be handled in accordance with a separate written protocol approved by the Judicial Council.

This bill would require the Judicial Council to, not later than January 1, 2016, develop a form to be used to help implement the separate written protocol approved by the Judicial Council.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3111 of the Family Code is amended to
2 read:
3 3111. (a) In any contested proceeding involving child custody
4 or visitation rights, the court may appoint a child custody evaluator
5 to conduct a child custody evaluation in cases ~~where~~ *when* the
6 court determines it is in the best interests of the child. The child
7 custody evaluation shall be conducted in accordance with the
8 standards adopted by the Judicial Council pursuant to Section
9 3117, and all other standards adopted by the Judicial Council
10 regarding child custody evaluations. If directed by the court, the
11 court-appointed child custody evaluator shall file a written
12 confidential report on his or her ~~evaluation on the form developed~~
13 ~~pursuant to Section 3117.5:~~ *evaluation, which shall be submitted*
14 *on, or attached to, the completed form developed pursuant to*
15 *Section 3117.5.* At least 10 days before any hearing regarding
16 custody of the child, the report shall be filed with the clerk of the
17 court in which the custody hearing will be conducted and served
18 on the parties or their attorneys, and any other counsel appointed
19 for the child pursuant to Section 3150. The report may be
20 considered by the ~~court.~~ *court if, (1) it is submitted on, or attached*
21 *to, the completed Judicial Council form, and, (2) it documents*

1 *compliance with the minimum state-mandated standards applicable*
2 *to the scope of the evaluation.*

3 (b) The report shall not be made available other than as provided
4 in subdivision (a) or Section 3025.5, or as described in Section
5 204 of the Welfare and Institutions Code or Section 1514.5 of the
6 Probate Code. Any information obtained from access to a juvenile
7 court case file, as defined in subdivision (e) of Section 827 of the
8 Welfare and Institutions Code, is confidential and shall only be
9 disseminated as provided by paragraph (4) of subdivision (a) of
10 Section 827 of the Welfare and Institutions Code.

11 (c) The report may be received in evidence on stipulation of all
12 interested parties and is competent evidence as to all matters
13 contained in the report.

14 (d) If the court determines that an unwarranted disclosure of a
15 written confidential report has been made, the court may impose
16 a monetary sanction against the disclosing party. The sanction
17 shall be in an amount sufficient to deter repetition of the conduct,
18 and may include reasonable attorney's fees, costs incurred, or both,
19 unless the court finds that the disclosing party acted with substantial
20 justification or that other circumstances make the imposition of
21 the sanction unjust. The court shall not impose a sanction pursuant
22 to this subdivision that imposes an unreasonable financial burden
23 on the party against whom the sanction is imposed. This
24 subdivision shall become operative on January 1, 2010.

25 (e) The Judicial Council shall, by January 1, 2010, do *both of*
26 *the following*:

27 (1) Adopt a form to be served with every child custody
28 evaluation report that informs the report recipient of the
29 confidentiality of the report and the potential consequences for the
30 unwarranted disclosure of the report.

31 (2) Adopt a rule of court to require that, when a court-ordered
32 child custody evaluation report is served on the parties, the form
33 specified in paragraph (1) shall be included with the report.

34 (f) For purposes of this section, a disclosure is unwarranted if
35 it is done either recklessly or maliciously, and is not in the best
36 interests of the child.

37 SEC. 2. Section 3117.5 is added to the Family Code, to read:

38 3117.5. (a) The Judicial Council shall, no later than January
39 1, 2016, develop a form to be used by every investigator or
40 evaluator conducting a child custody evaluation. The form shall

1 delineate each requirement ~~required by Section 3118 of, and~~
2 *incorporate any standards established by, Sections 3117 and 3118.*
3 *The form shall also incorporate all other standards adopted under*
4 *this code regarding child custody evaluations, and require that the*
5 *investigator or evaluator provide documentation in, or attached to,*
6 *the form showing that each task has been completed as required.*
7 For purposes of this section, a child custody evaluation means an
8 investigation and analysis of the health, safety, welfare, and best
9 interest of a child with regard to disputed custody and visitation
10 issues conducted pursuant to ~~Sections 3111 or Section 3111~~, 3118,
11 *or 3183 of this code*, Section 730 of the Evidence Code, or Article
12 1 (*commencing with Section 2032.010*) of Chapter 15 of Title 4
13 of Part 4 of the Code of Civil Procedure. *The child custody*
14 *evaluation form shall be consistent with Sections 3011, 3020, and*
15 *3044.*

16 (b) Child custody evaluations filed with the court on and after
17 January 1, 2016, shall be submitted ~~on on, or attached to,~~ the report
18 form developed pursuant to subdivision (a). *The evaluation report*
19 *may be considered by the court if, (1) it is submitted on, or attached*
20 *to, the completed Judicial Council form, and, (2) it documents*
21 *compliance with the minimum state-mandated standards applicable*
22 *to the scope of the evaluation.*

23 SEC. 3. Section 3118 of the Family Code is amended to read:

24 3118. (a) In any contested proceeding involving child custody
25 or visitation rights, where the court has appointed a child custody
26 evaluator or has referred a case for a full or partial court-connected
27 evaluation, investigation, or assessment, and the court determines
28 that there is a serious allegation of child sexual abuse, the court
29 shall require an evaluation, investigation, or assessment pursuant
30 to this section. When the court has determined that there is a serious
31 allegation of child sexual abuse, any child custody evaluation,
32 investigation, or assessment conducted subsequent to that
33 determination shall be considered by the court only if the
34 evaluation, investigation, or assessment is conducted in accordance
35 with the minimum requirements set forth in this section in
36 determining custody or visitation rights, except as specified in
37 paragraph (1). For purposes of this section, a serious allegation of
38 child sexual abuse means an allegation of child sexual abuse, as
39 defined in Section 11165.1 of the Penal Code, that is based in
40 whole or in part on statements made by the child to law

1 enforcement, a child welfare services agency investigator, any
2 person required by statute to report suspected child abuse, or any
3 other court-appointed personnel, or that is supported by substantial
4 independent corroboration as provided for in subdivision (b) of
5 Section 3011. When an allegation of child abuse arises in any other
6 circumstances in any proceeding involving child custody or
7 visitation rights, the court may require an evaluator or investigator
8 to conduct an evaluation, investigation, or assessment pursuant to
9 this section. The order appointing a child custody evaluator or
10 investigator pursuant to this section shall provide that the evaluator
11 or investigator have access to all juvenile court records pertaining
12 to the child who is the subject of the evaluation, investigation, or
13 assessment. The order shall also provide that any juvenile court
14 records or information gained from those records remain
15 confidential and shall only be released as specified in Section 3111.

16 (1) This section does not apply to any emergency court-ordered
17 partial investigation that is conducted for the purpose of assisting
18 the court in determining what immediate temporary orders may
19 be necessary to protect and meet the immediate needs of a child.
20 This section does apply when the emergency is resolved and the
21 court is considering permanent child custody or visitation orders.

22 (2) This section does not prohibit a court from considering
23 evidence relevant to determining the safety and protection needs
24 of the child.

25 (3) Any evaluation, investigation, or assessment conducted
26 pursuant to this section shall be conducted by an evaluator or
27 investigator who meets the qualifications set forth in Section
28 3110.5.

29 (b) The evaluator or investigator shall, at a minimum, do all of
30 the following:

31 (1) Consult with the agency providing child welfare services
32 and law enforcement regarding the allegations of child sexual
33 abuse, and obtain recommendations from these professionals
34 regarding the child's safety and the child's need for protection.

35 (2) Review and summarize the child welfare services agency
36 file. No document contained in the child welfare services agency
37 file may be photocopied, but a summary of the information in the
38 file, including statements made by the children and the parents,
39 and the recommendations made or anticipated to be made by the
40 child welfare services agency to the juvenile court, may be recorded

1 by the evaluator or investigator, except for the identity of the
2 reporting party. The evaluator's or investigator's notes
3 summarizing the child welfare services agency information shall
4 be stored in a file separate from the evaluator's or investigator's
5 file and may only be released to either party under order of the
6 court.

7 (3) Obtain from a law enforcement investigator all available
8 information obtained from criminal background checks of the
9 parents and any suspected perpetrator that is not a parent, including
10 information regarding child abuse, domestic violence, or substance
11 abuse.

12 (4) Review the results of a multidisciplinary child interview
13 team (hereafter MDIT) interview if available, or if not, or if the
14 evaluator or investigator believes the MDIT interview is inadequate
15 for purposes of the evaluation, investigation, or assessment,
16 interview the child or request an MDIT interview, and shall
17 wherever possible avoid repeated interviews of the child.

18 (5) Request a forensic medical examination of the child from
19 the appropriate agency, or include in the report required by
20 paragraph (6) a written statement explaining why the examination
21 is not needed.

22 (6) File a confidential written report with the clerk of the court
23 in which the custody hearing will be conducted and which shall
24 be served on the parties or their attorneys at least 10 days prior to
25 the hearing. This report may not be made available other than as
26 provided in this subdivision. This report shall include, but is not
27 limited to, the following:

28 (A) Documentation of material interviews, including any MDIT
29 interview of the child or the evaluator or investigator, written
30 documentation of interviews with both parents by the evaluator or
31 investigator, and interviews with other witnesses who provided
32 relevant information.

33 (B) A summary of any law enforcement investigator's
34 investigation, including information obtained from the criminal
35 background check of the parents and any suspected perpetrator
36 that is not a parent, including information regarding child abuse,
37 domestic violence, or substance abuse.

38 (C) Relevant background material, including, but not limited
39 to, a summary of a written report from any therapist treating the
40 child for suspected child sexual abuse, excluding any

1 communication subject to Section 1014 of the Evidence Code,
2 reports from other professionals, and the results of any forensic
3 medical examination and any other medical examination or
4 treatment that could help establish or disprove whether the child
5 has been the victim of sexual abuse.

6 (D) The written recommendations of the evaluator or
7 investigator regarding the therapeutic needs of the child and how
8 to ensure the safety of the child.

9 (E) A summary of the following information: whether the child
10 and his or her parents are or have been the subject of a child abuse
11 investigation and the disposition of that investigation; the name,
12 location, and telephone number of the children's services worker;
13 the status of the investigation and the recommendations made or
14 anticipated to be made regarding the child's safety; and any
15 dependency court orders or findings that might have a bearing on
16 the custody dispute.

17 (F) Any information regarding the presence of domestic violence
18 or substance abuse in the family that has been obtained from a
19 child protective agency in accordance with paragraphs (1) and (2),
20 a law enforcement agency, medical personnel or records, prior or
21 currently treating therapists, excluding any communication subject
22 to Section 1014 of the Evidence Code, or from interviews
23 conducted or reviewed for this evaluation, investigation, or
24 assessment.

25 (G) Which, if any, family members are known to have been
26 deemed eligible for assistance from the Victims of Crime Program
27 due to child abuse or domestic violence.

28 (H) Any other information the evaluator or investigator believes
29 would be helpful to the court in determining what is in the best
30 interests of the child.

31 (I) On and after January 1, 2016, documentation showing
32 compliance with all requirements of this section and the results of
33 the investigation shall be submitted to the court ~~on the~~ *on, or*
34 *attached to, the completed* form developed pursuant to Section
35 3117.5 by the Judicial Council.

36 (c) If the evaluator or investigator obtains information as part
37 of a family court mediation, that information shall be maintained
38 in the family court file, which is not subject to subpoena by either
39 party. If, however, the members of the family are the subject of
40 an ongoing child welfare services investigation, or the evaluator

1 or investigator has made a child welfare services referral, the
2 evaluator or investigator shall so inform the family law judicial
3 officer in writing and this information shall become part of the
4 family law file. This subdivision may not be construed to authorize
5 or require a mediator to disclose any information not otherwise
6 authorized or required by law to be disclosed.

7 (d) In accordance with subdivision (d) of Section 11167 of the
8 Penal Code, the evaluator or investigator may not disclose any
9 information regarding the identity of any person making a report
10 of suspected child abuse. Nothing in this section is intended to
11 limit any disclosure of information by any agency that is otherwise
12 required by law or court order.

13 (e) The evaluation, investigation, or assessment standards set
14 forth in this section represent minimum requirements of evaluation
15 and the court shall order further evaluation beyond these minimum
16 requirements when necessary to determine the safety needs of the
17 child.

18 (f) If the court orders an evaluation, investigation, or assessment
19 pursuant to this section, the court shall consider whether the best
20 interests of the child require that a temporary order be issued that
21 limits visitation with the parent against whom the allegations have
22 been made to situations in which a third person specified by the
23 court is present or whether visitation will be suspended or denied
24 in accordance with Section 3011.

25 (g) An evaluation, investigation, or assessment pursuant to this
26 section shall be suspended if a petition is filed to declare the child
27 a dependent child of the juvenile court pursuant to Section 300 of
28 the Welfare and Institutions Code, and all information gathered
29 by the evaluator or investigator shall be made available to the
30 juvenile court.

31 (h) This section may not be construed to authorize a court to
32 issue any orders in a proceeding pursuant to this division regarding
33 custody or visitation with respect to a minor child who is the
34 subject of a dependency hearing in juvenile court or to otherwise
35 supersede Section 302 of the Welfare and Institutions Code.

36 (i) *On and after January 1, 2016, documentation showing*
37 *compliance with all requirements of this section and the results*
38 *of the investigation shall be submitted to the court on, or attached*
39 *to, the completed form developed pursuant to Section 3117.5 by*
40 *the Judicial Council.*

1 SEC. 4. Section 3170 of the Family Code is amended to read:

2 3170. (a) If it appears on the face of a petition, application, or
3 other pleading to obtain or modify a temporary or permanent
4 custody or visitation order that custody, visitation, or both are
5 contested, the court shall set the contested issues for mediation.

6 (b) (1) Domestic violence cases shall be handled by Family
7 Court Services in accordance with a separate written protocol
8 approved by the Judicial Council. The Judicial Council shall adopt
9 guidelines for services, other than services provided under this
10 chapter, that courts or counties may offer to parents who have been
11 unable to resolve their disputes. These services may include, but
12 are not limited to, parent education programs, booklets, video
13 recordings, or referrals to additional community resources.

14 (2) The Judicial Council shall, no later than January 1, 2016,
15 develop a form to be used to help implement the written protocol
16 for handling domestic violence cases.

17 SEC. 5. Section 3183 of the Family Code is amended to read:

18 3183. (a) Except as provided in Section 3188, the mediator
19 may, consistent with local court rules, submit a recommendation
20 to the court as to the custody of or visitation with the child, if the
21 mediator has first provided the parties and their attorneys, including
22 counsel for any minor children, with the recommendations in
23 writing in advance of the hearing. The court shall make an inquiry
24 at the hearing as to whether the parties and their attorneys have
25 received the recommendations in writing. If the mediator is
26 authorized to submit a recommendation to the court pursuant to
27 this subdivision, the mediation and recommendation process shall
28 be referred to as “child custody recommending counseling” and
29 the mediator shall be referred to as a “child custody recommending
30 counselor.” Mediators who make those recommendations are
31 considered mediators for purposes of Chapter 11 (commencing
32 with Section 3160), and shall be subject to all requirements for
33 mediators for all purposes under this code and the California Rules
34 of Court. On and after January 1, 2012, all court communications
35 and information regarding the child custody recommending
36 counseling process shall reflect the change in the name of the
37 process and the name of the providers.

38 (b) *A child custody recommending counselor who makes child*
39 *custody and visitation recommendations to the court is considered*
40 *a child custody evaluator for purposes of Chapter 11 (commencing*

1 *with Section 3160) and is considered a child custody evaluator*
2 *for purposes of Chapter 6 (commencing with Section 3110). A*
3 *child custody recommending counselor shall be subject to all*
4 *requirements for mediators and custody evaluators for all purposes*
5 *under this code and the California Rules of Court. Commencing*
6 *January 1, 2016, a child custody recommending counselor's report*
7 *shall be submitted on, or attached to, the completed form developed*
8 *pursuant to Section 3117.5. The recommendation report may be*
9 *considered by the court if, (1) it is submitted on, or attached to,*
10 *the completed Judicial Council form, and, (2) it documents*
11 *compliance with the minimum state-mandated child custody*
12 *evaluation standards applicable to the scope of the evaluation.*

13 ~~(b)~~

14 (c) If the parties have not reached agreement as a result of the
15 mediation proceedings, the mediator may recommend to the court
16 that an investigation be conducted pursuant to Chapter 6
17 (commencing with Section 3110) or that other services be offered
18 to assist the parties to effect a resolution of the controversy before
19 a hearing on the issues.

20 ~~(e)~~

21 (d) In appropriate cases, the mediator may recommend that
22 restraining orders be issued, pending determination of the
23 controversy, to protect the well-being of the child involved in the
24 controversy.